

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Inter-city Christian Youth Program, Inc.)	File No.: EB-FIELDSCR-12-00001738
)	NAL/Acct. No.: 201232540008
Licensee of Station KCYP-LP)	FRN: 0016085474
Mission, Texas)	Facility ID No.: 135621
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: August 15, 2012

Released: August 15, 2012

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Inter-city Christian Youth Program, Inc. (ICYP), licensee of low power FM Station KCYP-LP in Mission, Texas (Station), apparently willfully and repeatedly violated Section 11.35(a) of the Commission's rules (Rules)¹ by failing to install and maintain operational Emergency Alert System (EAS) equipment. We conclude that ICYP is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). In addition, we direct ICYP to submit, no later than thirty (30) calendar days from the release date of this NAL, a statement signed under penalty of perjury stating that Station KCYP-LP now complies with the Commission's EAS requirements.

II. BACKGROUND

2. On March 29, 2012, in response to a complaint that Station KCYP-LP did not have operational EAS equipment, an agent from the Enforcement Bureau's Houston Office (Houston Office) inspected the Station in Mission, Texas. The agent observed that the Station did not have EAS equipment installed and operational at its main studio. The Station's manager, who accompanied the agent during the inspection, stated that Station KCYP-LP has operated without EAS equipment since the Station began operations in August 2007. The Station's manager was also unable to provide any EAS logs for the Station.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.² Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.³ The legislative history to Section 312(f)(1) of the Act clarifies that this

¹ 47 C.F.R. § 11.35(a).

² 47 U.S.C. § 503(b).

³ 47 U.S.C. § 312(f)(1).

definition of willful applies to both Sections 312 and 503(b) of the Act,⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

A. Failure to Install and Maintain Operational Emergency Alert System Equipment

4. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source.⁸ The EAS enables the President and state and local governments to provide immediate communications and information to the general public.⁹ State and local area plans identify key EAS sources responsible for coordinating carriage of common emergency messages from the sources such as the National Weather Service or local emergency management officials.¹⁰ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation’s emergency warning system, the EAS is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees.

5. Section 11.35(a) of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation.¹¹ Section 73.1820(a)(1)(iii) of the Rules requires licensees to create an entry for each test and activation of the EAS in the station log or in a special EAS log.¹² On March 29, 2012, an agent from the Houston Office inspected Station KCYP-LP and observed that the Station did not have EAS equipment installed while it

⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁶ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁷ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

⁸ 47 C.F.R. §§ 11.11, 11.41.

⁹ 47 C.F.R. §§ 11.1, 11.21.

¹⁰ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources. 47 C.F.R. § 11.21.

¹¹ 47 C.F.R. § 11.35(a). Low power FM stations are not required to have an EAS encoder. See 47 C.F.R. § 11.11(a).

¹² 47 C.F.R. § 73.1820(a)(1)(iii). See also 47 C.F.R. § 11.35 (requiring licensees to record in EAS log the cause of any failure to receive any EAS tests and when defective EAS equipment is removed from service).

was in operation. In addition, the Station could not provide any evidence or EAS logs documenting that it had operational EAS equipment installed or that it had ever conducted any of the required weekly or monthly EAS tests.¹³ In fact, the Station manager stated to the agent during the inspection that Station KCYP-LP has operated without installed EAS equipment since the Station began operations in August 2007. Based on the evidence before us, we find that ICYP apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to install and maintain operational EAS equipment.

B. Proposed Forfeiture Amount and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to have operational EAS equipment installed is \$8,000.¹⁴ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁵ Given the totality of the circumstances, including the duration of the violation, we find an upward adjustment in the amount of \$2,000 is warranted.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that ICYP is apparently liable for a total forfeiture of \$10,000.

7. We direct ICYP to submit a written statement, pursuant to Section 1.16 of the Rules,¹⁷ signed under penalty of perjury by an officer or director of ICYP, stating that operational EAS equipment has been installed at Station KCYP-LP and that the Station complies with the Commission's EAS rules. This statement must be provided to the Houston Office at the address listed in paragraph 10 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Inter-city Christian Youth Program, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 11.35(a) of the Commission's rules.¹⁸

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Inter-city Christian Youth Program, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

¹³ See 47 C.F.R. § 11.61.

¹⁴ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ See, e.g., *St. George Cable, Inc.*, Forfeiture Order, 26 FCC Rcd 16027 (Enf. Bur. 2011) (imposing an upward adjustment of \$4,500 for cable system that had not installed EAS equipment as of 2002) (forfeiture not paid); *Richards TV Cable Co., Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 1520 (Enf. Bur. 2012) (proposing upward adjustment of \$2,000 for cable system that failed to install EAS equipment from 2008 until 2011, despite being warned to do so).

¹⁷ 47 C.F.R. § 1.16.

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35(a).

10. **IT IS FURTHER ORDERED** that Inter-city Christian Youth Program, Inc. **SHALL SUBMIT** a statement as described in paragraph 7 to the Houston Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas 77065. Inter-city Christian Youth Program, Inc. shall also e-mail the written statement to SCR-Response@fcc.gov.

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Inter-city Christian Youth Program, Inc. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁰ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.²¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas 77065 and include the NAL/Acct. No. referenced in the caption. Inter-city Christian Youth Program, Inc. also shall e-mail the written response to SCR-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁰ See 47 C.F.R. § 1.1914.

²¹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Inter-city Christian Youth Program, Inc. at RT. 1, Box 1050, Mission, Texas 78572.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau